

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 07-1265

ALBERT ROLAND

APPELLANT

V.

COMMERCIAL BANK & TRUST
COMPANY

APPELLEE

Opinion Delivered October 22, 2008

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT,
[NO. CV-02-128-2]

HONORABLE SAM POPE, JUDGE

DISMISSED

SARAH J. HEFFLEY, Judge

Appellant Albert Roland purports to bring this appeal from an order denying his motion to set aside a foreclosure decree and sale of the property. We must dismiss the appeal because the notice of appeal was untimely.

On October 17, 2002, appellee Commercial Bank and Trust Company filed a complaint in foreclosure against appellant and Margaret Charleston concerning a past-due indebtedness on a note secured by a mortgage on property in McGehee. Neither appellant nor Charleston filed an answer to the complaint, and a foreclosure decree was entered by default on November 18, 2004. The foreclosure sale was delayed by a fire on the property and also a stay in bankruptcy, but the sale finally occurred on August 22, 2006.

On September 1, 2006, appellant filed a “Motion to Set Aside Judgment, Sale and to Execution.” At a hearing, the gist of appellant’s testimony was that he did not file an answer to the foreclosure complaint because he was not able to read. He also asserted that he had received no notice of the foreclosure sale.

The trial court denied appellant's motion with an order entered on April 27, 2007. On the same day, the trial court entered an order confirming the foreclosure sale. Appellant filed a pro se notice of appeal on May 30, 2007.¹

On August 31, 2007, appellant filed a pro se motion to extend the time for filing the record on appeal. Appellee responded with a motion to dismiss the appeal on the ground that the motion to extend the time for filing the record was filed beyond the ninety-day deadline found in Ark. R. App. P.—Civ. 5(a). The trial court also held a hearing on this matter. At its conclusion, the trial court granted appellee's motion to dismiss, which was followed by a written order dismissing the appeal on September 24, 2007. Appellant filed a pro se notice of appeal on September 19, 2007. This appeal followed.

In this appeal, appellant contends that the trial court erred by not granting his motion to set aside the foreclosure decree and sale because he lacked notice. We do not have jurisdiction to address appellant's arguments concerning the denial of this motion.

The order denying appellant's motion to set aside was entered on April 27, 2007. Rule 4(a) of the Rules of Appellate Procedure - Civil requires a notice of appeal to be filed within thirty days from the entry of the order that is being appealed. Appellant's notice of appeal was due to be filed on May 27, 2007. That day fell on a Sunday, so in accordance with Ark. R. Civ. P. 6(a), which excludes Saturdays, Sundays, and legal holidays from the

¹ In the notice of appeal, appellant stated that he was appealing the order "denying and dismissing the separate defendant's Motion to Set Aside the Judgment, Confirmation of Foreclosure Sale and Execution" that was entered on May 27, 2007. The record reveals that both the order denying appellant's motion to set aside and the order confirming the sale were entered on April 27, 2007, not May 27, 2007. We also note that, technically, appellant should have appealed from the order confirming the sale. *See Seay v. C.A.R. Transp. Brokerage Co.*, 366 Ark. 527, 237 S.W.3d 48 (2006).

computation of time, appellant's notice of appeal became due on Monday, May 28. However, that Monday was Memorial Day, a legal holiday, making appellant's notice of appeal due on Tuesday, May 29. Appellant's notice of appeal was filed on May 30, which is one day late.

The timely filing of a notice of appeal is jurisdictional, and we are required to raise the issue of subject-matter jurisdiction on our own motion. *Stacks v. Marks*, 354 Ark. 594, 127 S.W.3d 483 (2003). Because the notice of appeal was untimely, we are not able to entertain an appeal from the denial of appellant's motion.

We have not overlooked the fact that the trial court had already dismissed appellant's appeal from the order denying his motion to set aside the decree and sale. The trial court did so because the record on appeal was not filed within ninety days of the notice of appeal and because appellant's motion to extend the time for filing the record was filed outside the ninety-day time period. *See* Ark. R. App. P. - Civil 5(a) & (b). In actuality, any appeal from the order was subject to dismissal because the notice of appeal was late in the first place. Appellant has brought a timely appeal from the order dismissing the appeal, and this is the only order that is properly before us to review. We express no opinion on this matter because appellant has made no argument contesting the trial court's order dismissing the appeal.

Dismissed.

HART and GLADWIN, JJ., agree.